
**COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT
WITH THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

This Cooperative Research and Development Agreement ("Agreement") is entered into by and between _ [insert business name] a [name the state in which the Company is incorporated] Corporation which has its principal place of business at _ ("the Company"), and the [the EPA Laboratory or Office] ("the Laboratory") of the U.S. Environmental Protection Agency ("EPA") under the authority of the Title 15, United States Code [[section]][[section]] 3710a-3710d (commonly known as the Federal Technology Transfer Act of 1986).

WITNESSETH:

A. WHEREAS, the Congress in enacting the Federal Technology Transfer Act of 1986, (the "FTTA"), has found that Federal laboratories' developments should be made accessible to private industry, state and local governments, and has declared that one of the purposes of such Act is to improve the economic, environmental and social well being of the United States by stimulating the utilization of Federally-funded technology developments by such parties;

** This language should not be changed except by L. Fradkin or OGC.

B. WHEREAS, the FTFTA provides each Federal agency with the authority to permit the Director of Government-operated laboratories to enter into cooperative research and development agreements with Federal or non-Federal entities, including private firms and organizations for the purpose of providing to, or obtaining from, collaborating parties, personnel, services, property, facilities, equipment or other resources toward the conduct of specified research and development efforts, which may include the disposition of patent rights in the inventions resulting from such collaboration;

** This language should not be changed except by L. Fradkin or OGC.

C. WHEREAS, the Laboratory has performed and has sponsored substantial research and development with respect to _;

** Briefly describe the area in which you will be working. This may be the Laboratory's mission or a general area of research expertise.

D. WHEREAS, the Laboratory possesses certain advanced scientific skills, facilities, special equipment, information, computer software, and know-how pertaining _;

** Briefly restate the area in which you will be working.

** If the Laboratory owns patents or patent applications on the Technology, add a phrase that makes reference to such patent rights.

E. WHEREAS, the Laboratory and the Company desire to...

** Briefly describe the research that the Laboratory and the Company wish to conduct.

F. WHEREAS, the Laboratory and the Company are interested in the further development of the _ technology and its utilization by private and public entities;

G. WHEREAS, the Company desires to provide resources for the Laboratory's development and/or evaluation of the _ technology;

H. WHEREAS, the Laboratory views its collaboration with the Company to develop/evaluate the _ technology to be in the furtherance of the public interest;

NOW, THEREFORE, the parties hereto agree as follows:

Article 1. Definitions

** Definitions 1.1-1.8 should not be changed, except for renumbering due to additional definitions. Definition 1.9, "Technology" should be specific to the Agreement. Additional definitions appropriate to specific Agreements may be added alphabetically within this list.

As used in this Cooperative Research and Development Agreement, the following terms shall have the following meanings and such meanings should be equally applicable to both the singular and plural forms of the terms defined:

1.1 "Agreement" means this Cooperative Research and Development Agreement entered into by the Laboratory pursuant to 15 U.S.C. [[section]] 3710a.

1.2 "Computer Software" means computer software, computer programs, computer data bases, and documentation thereof developed, in whole or in part, under this Agreement.

1.3 "Government" means the Government of the United States of America.

1.4 "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under the intellectual property laws of this or any foreign country.

1.5 "Made" in relation to any Invention means the conception or first actual reduction to practice of such Invention.

1.6 "Proprietary Information" means information which embodies trade secrets developed at private expense, or which is confidential business or financial information, provided that such information:

(a) Is not generally known or available from other sources without obligation concerning its confidentiality;

(b) Has not been made available by the owners to others without obligation concerning its confidentiality; and

(c) Is not already available to the Government without obligation concerning its confidentiality.

1.7 "Subject Data" means all recorded information first produced in the performance of this Agreement. This term includes Computer Software.

1.8 "Subject Invention" means any Invention conceived or first actually reduced to practice in the performance of work under

this Agreement.

1.9 "Technology" means

** Define the technology/research that is proposed.

Article 2. Cooperative Research

2.1 Statement of Work. Cooperative research and development work performed under this Agreement shall be performed in accordance with the Statement of Work ("SOW") attached hereto as Attachment A. The SOW sets forth a "period of performance". The Laboratory and the Company agree to perform the cooperative research and development work and to utilize such personnel, resources, facilities, equipment, skills, know-how and information as is reasonably necessary.

** This language should not be changed except by L. Fradkin or OGC.

2.2 Review of Work. Periodic conferences shall be held between the Laboratory and the Company personnel for the purpose of reviewing the progress of the work. The Laboratory shall have exclusive control and supervision over the conduct of all cooperative research and development work at the Laboratory facility. The Company shall have exclusive control and supervision over the conduct of all cooperative research and development work at the Company facility. It is understood that the nature of this cooperative research and development work is such that completion within the period of performance specified in the SOW or within the limits of financial support allocated, cannot necessarily be guaranteed. Accordingly, it is agreed that all cooperative research is to be performed on a best efforts basis.

** This language should not be changed unless the Laboratory and the Company agree that periodic conferences are not necessary, or they wish to specify when such conferences will be held.

2.3 Assigned Personnel. Each party shall perform its respective obligations under this Agreement under the direction of a "Project Manager" and a "Principal Investigator". Project Managers shall be responsible for the overall direction of the work, establishing budgets and providing such approvals and consents as are required hereunder. Principal Investigators shall be responsible for the scientific and technical conduct of the work, including the exchange of Subject Data and other information. The parties designate the following individuals as their respective representatives.

Laboratory Company

Project Manager ? ?

Principal Investigator ? ?

2.4 Scope Change. If at any time the Project Managers determine that the research data justify a substantial change in the direction of the work, the parties shall make a good faith effort to agree on any necessary changes to the SOW.

** This language can be made more specific if the parties desire.

Article 3. Reports

3.1 Final Report. The Laboratory shall submit a final report to the Company of the Laboratory's results within _ days after (a) completing the SOW or (b) the termination of this Agreement. The Company shall submit a final report to the Laboratory of the Company's results within _ days after (a) completing the SOW or (b) the termination of this Agreement.

Article 4. Financial Obligations

4.1 Transfer of Funds. The Company agrees to pay \$_____ to EPA for the performance of research specified in Article 2 and the SOW in Attachment A. A check payable to the U.S Environmental Protection Agency (EPA) must be delivered to EPA before work can be initiated by the Laboratory. The check shall be mailed to:

U.S. Environmental Protection Agency
Headquarters Accounting and Operations Branch
Attention: FTTA
P.O. Box 360227M
Pittsburgh, PA 15251

The check shall be accompanied by a copy of the first page of this Agreement, the signature page of this Agreement, and the SOW in Attachment A.

** This language should not be changed except by L. Fradkin or OGC.

4.2 Assignment of Personnel. In addition to the funding by the Company, called for in paragraph 4.1 above, the Company shall provide the services of a qualified research associate who will assist in the efforts under the SOW in Appendix A. The associate shall be an employee of the Company and shall be stationed at _____.

** This paragraph should be included if the Agreement contemplates direct assignment of Company personnel to the project.

4.3 Accounting Records. The Laboratory shall maintain separate and distinct current accounts, records, and other evidence supporting all its expenditures under this Agreement. The accounts and records shall be available for reasonable inspection and copying by the Company or its authorized representative.

** This language should not be changed except by L. Fradkin or OGC.

Article 5. Invention, Computer Software, and Patent Rights

5.1 Reporting. The Laboratory shall promptly report to the Company each subject Invention reported to the Laboratory by its employees. The Company shall promptly report to the Laboratory each Subject Invention reported to the Company by any of its employees.

5.2 Government's Minimum Rights. All assignments made by the Laboratory under this paragraph 5.2 and all licenses granted by the Laboratory to the Company are subject to the reservation of statutorily required licenses in favor of the Government as described in this paragraph 5.2. In accordance with 15 U.S.C.

[[section]] 3710a(b)(3) the Company grants to the Laboratory a nonexclusive, irrevocable, paid-up license to practice all Company Subject Inventions or have all Company Subject Inventions practiced throughout the world on behalf of the Government. Also in accordance with 15 U.S.C. [[section]] 3710a(b)(2) the Laboratory retains a nonexclusive, nontransferable, irrevocable, paid-up license to practice all the Laboratory and joint Subject Inventions or have the Laboratory and joint Subject Inventions practiced, throughout the world by or on behalf of the Government.

5.3 Company Employee Inventions. The Company shall obtain from each of its employees and each of the employees of its subcontractors who will, or is likely to perform work under this Agreement, an agreement to assign to the Company his or her rights to Subject Inventions. Regardless of whether such a prospective agreement has been obtained, the Company shall obtain from any of its employees or its subcontractor's employees that is a sole inventor or a co-inventor of a Subject Invention, an assignment of all domestic and foreign right, title and interest in said Subject Invention. The Company shall retain its intellectual property rights to any Subject Invention made by Company employees or the employees of the Company's subcontractor. If the Company decides not to retain its rights, the Company shall offer to assign its rights to the Subject Invention to the Laboratory, subject to a paid-up license to practice the assigned Subject Invention throughout the world. If the Laboratory declines such assignment, the Company may release its right to employee inventors, subject to the reservation of patent licenses in favor of the Government as required in paragraph 5.2 above.

5.4 Laboratory Employee Inventions. The Laboratory shall obtain from each of its employees that is a sole inventor or a co-inventor, of a Subject Invention, an assignment to the Government, as represented by the Administrator of EPA, of all domestic and foreign right, title and interest in said Subject Invention. If the Laboratory decides not to retain its rights to a Subject Invention, the Laboratory shall offer to assign its rights to the Subject Invention to the Company, subject to the reservation of patent licenses in favor of the Government as required in paragraph 5.2 above. If the Company declines such assignment, the Laboratory may release its rights to its employee inventors.

5.5 Inventions by the Laboratory's Contractors. The Company agrees that the Laboratory may contract with a contractor to perform all or part of the work required under the SOW. The Laboratory, to the extent permitted by 35 U.S.C. Chapter 18 and Executive Order 12591, shall include in each such contract provisions ensuring that the contractor shall assign to the Laboratory all inventions made by the contractor, its employees and its subcontractors during the course of performing work under

the SOW. However, the inability of the Laboratory to include such provisions in its contracts shall not constitute a breach of this Agreement by the Laboratory, nor shall it be a basis for unilateral termination of this Agreement by the Company.

5.6 Filing of Patent Applications. The party retaining title to a Subject Invention shall file patent applications in a timely manner; the Company shall be responsible for filing patent applications for joint Subject Inventions between the Company and the Laboratory in a timely manner. The filing party may elect not to file a patent application in any particular country or countries provided it so advises the other party ninety (90) days prior to the expiration of any applicable filing deadline, priority period, or statutory bar date. The party electing not to file shall assign its intellectual property right, title, and interest in such country or countries to the Subject Invention to the other party and shall cooperate in the preparation and filing of patent applications, provided the other party agrees to file a patent application in such country or countries. Any assignment by the Government to the Company shall be subject to reservation of patent licenses in favor of the Government as required in paragraph 5.2. Any assignment by the Company to the Government shall be subject to reservation of a paid-up license in favor of the Company to practice the assigned Subject Invention throughout the world.

5.7 Patent Expenses. All of the expenses attendant to the filing of patent applications shall promptly be paid by the party filing such application. Any post filing and post patent fees shall also be borne by the same party. If the Company obtains an exclusive license of the Government's interest in a patent or patent application filed by the Laboratory, the Company shall reimburse the Laboratory for all such patent filing, post filing and post patent expenses paid by the Laboratory. If the Company obtains a nonexclusive license of the Government's interest in a patent or patent application filed by the Laboratory, the Company shall reimburse the Laboratory for one-half of all such filing and other patent expenses.

5.8 Prosecution of Patent Applications. Each party to this Agreement shall promptly provide the other party with copies of any patent application it files on any Subject Invention, and a copy of each action received from a patent office and each item of correspondence with a patent office. The parties agree to consult and cooperate with each other in obtaining and maintaining protection for Subject Inventions. In addition, on request, each party that has filed a patent application shall issue to the other party a "Power to Inspect and Make Copies" in any patent office of any identified patent application.

5.9 Company and Laboratory Employee Rights. In the event that the Company and the Laboratory decide that a patent application on a particular Subject Invention need not be filed in a particular country, either or both (if there are co-inventors

from each party) may, at their sole discretion and subject to reasonable conditions, allow the inventor(s) to retain title to that Invention and release to them the right to file. Such conditions shall include nonexclusive, irrevocable, paid-up licenses to the Company and the Laboratory to practice, or have practiced, that Subject Invention throughout the world. Said licenses shall be evidenced by a confirmatory license in a form acceptable to the Company and the Laboratory.

5.10 Exclusive License

5.10.1 Grant. The Laboratory, on behalf of the Government, hereby grants to the Company a first option to an exclusive license of the Government's interest in each Subject Invention and in any resulting patents issued on such Subject Invention. This option may be exercised not later than six (6) months following the filing of a patent application on the Subject Invention in the U.S. Patent and Trademark Office pursuant to paragraph 5.6, above.

5.10.2 Exclusive License Terms. Upon notice received by the Laboratory from the Company that it wishes to exercise the option referred to in paragraph 5.10.1 above, the terms of the exclusive license will be negotiated promptly by the Laboratory and the Company. Any exclusive license will be subject to the reservation by the Government of a non-exclusive, irrevocable, paid-up license to practice or have practiced on its behalf the Subject Invention throughout the world.

The Laboratory and the Company agree that the term of the license will be for a period of either _ years from the issuance date of the U.S. patent on the Subject Invention, or until the sale or dissolution of the Company, whichever occurs first. The Laboratory and the Company agree to negotiate in good faith for an extension of said period. A request by the Company for an extension of the exclusive license may be filed at any time prior to the expiration of the exclusive license and must be supported by a factual showing that such a renewal is necessary to permit the Company to recapture its investment and make a reasonable profit.

The Laboratory and the Company agree that a condition of any exclusive license to the Company of a Subject Invention shall be that the Company will pay the Laboratory a reasonable royalty rate. In addition, the Laboratory and the Company agree that the exclusive license shall include such additional terms and conditions as the Laboratory and Company may specify or which may be required by relevant Government invention or patent licensing laws and regulations.

** The license periods are negotiable, but as a matter of law cannot exceed the life of the patent.

5.11 Computer Software

5.11.1 Reporting. The Laboratory shall promptly report to the Company any Computer Software developed by its employees and, to the extent it has the right to do so, Computer Software made by

any of its contractors. The Company shall promptly report to the Laboratory any Computer Software developed by any of its employees or contractors.

On request from the Laboratory, the Company shall deliver to the Laboratory a copy of such Computer Software in a form mutually agreed to by the Laboratory and the Company.

5.11.2 Laboratory Employee Developed Computer Software. In view of the provisions of 17 U.S.C. [[section]] 105, any Computer Software developed solely by one or more employees of the U.S. Government, as part of their official duties, cannot be copyrighted.

5.11.3 Company Developed Computer Software. In the case of Computer Software developed solely by (an) employee(s) of the Company, the Company shall advise the Laboratory, within six (6) months of reporting such software, pursuant to paragraph 5.11.1 above, whether it wishes to retain title thereto.

If the Company elects to not retain title to Computer Software, on written request from the Laboratory, it will assign its rights, including any copyright, to the Laboratory. The Laboratory shall provide the Company with an appropriate document for the conveyance of such rights.

If the Company elects to retain title to such Computer Software it may assert copyright thereto and/or patent rights. If the Company asserts copyright to said Computer Software, it hereby grants to the U.S. Government and others acting on its behalf, a nonexclusive, irrevocable, paid-up worldwide license in such copyrighted Computer Software to use, reproduce, prepare derivative works and/or make improvements thereto.

5.11.4 Laboratory and Company Jointly Developed Computer Software. If the Company wishes to retain ownership of its copyright interest in the Computer Software, and wishes to rely on copyright protection, it may do so, subject to the Government license in 5.11.3 above, and subject to the provisions of Title 17, U.S. Code, Section 105.

5.11.5 Patenting of Computer Software. In the event the Company seeks patent protection for Computer Software developed either solely by its employees or jointly with Laboratory employees, the foregoing provisions applicable to Subject Inventions shall apply to such Computer Software.

5.11.6 Patent and Copyright Protection for Computer Software. If the Company seeks both patent protection and copyright protection, the rights of the Government shall be those applicable to a Subject Invention.

5.11.7 Computer Software Produced by Laboratory Contractors or EPA Contractors. The Laboratory, to the extent permitted by law and/or the Federal Acquisition Regulations at Title 48, C.F.R., shall include in any contract awarded after the effective date of this Agreement, a provision providing that any rights to patents or copyrights for Computer Software developed by the contractor, while performing work designated by the Laboratory as work under

this Agreement, will be assigned to EPA. The Laboratory and EPA agree that such software will be considered Computer Software made under this Agreement, and that the rights obtained from the contractor will be assigned to the Company, subject to the foregoing provisions of this Agreement pertaining to Subject Inventions or Computer Software.

In the case of a Laboratory contract awarded prior to the effective date of this Agreement, which contains one or more provisions that prevent acquisition of title to computer software by the Laboratory or EPA, the Laboratory and EPA agree that they will exert a good faith effort to amend the contract in such a way as to be able to comply with the immediately preceding paragraph; provided however, that if the Laboratory or EPA should fail to bring about the necessary amendment, the Laboratory and EPA shall not be liable for a breach of this Agreement, nor shall such failure be a basis for termination of this Agreement by the Company.

Article 6. Data and Publication

6.1 Proprietary Information. The Company shall place a proprietary notice on all information it delivers to the Laboratory under this Agreement which it asserts is Proprietary Information of the Company. The Laboratory agrees that any information designated as Proprietary Information which is furnished by the Company to the Laboratory under this Agreement, or in contemplation of this Agreement, shall be used by the Laboratory only for the purpose of carrying out this Agreement. Information designated as Proprietary Information shall not be disclosed, copied, reproduced or otherwise made available in any form whatsoever to any other person, firm, corporation, partnership, association or other entity without consent of the Company except as such information may be subject to disclosure under the Freedom of Information Act (5 U.S.C. [[section]] 552) and EPA's regulations at 40 C.F.R. Part 2. To the extent permitted, the Laboratory agrees to use its best efforts to protect the information designated as Proprietary Information from unauthorized disclosure. The Company agrees that the Laboratory is not liable for the disclosure of Proprietary Information which, after notice to and consultation with the Company, the Laboratory determines may not lawfully be withheld or which a court of competent jurisdiction requires to be disclosed. If no claim of confidentiality accompanies information at the time of submittal, the information may be made public with no further notice to the Company.

6.2 Release Restrictions. The Laboratory shall have the right to use all Subject Data for any Governmental purpose, but shall not release such Subject Data publicly except:

(a) the Laboratory in reporting the results of cooperative research may publish Subject Data, subject to the provisions of paragraph 6.3 below, and provided the Company is given 45 days to review the manuscript and provide suggestions before publication;

and

(b) the Laboratory may release such Subject Data where such release is required pursuant to a request under the Freedom of Information Act (5 U.S.C. [[section]] 552) and the EPA regulations at 40 C.F.R. Part 2; provided, however that pursuant to 35 U.S.C. [[section]] 205, such data will not be released to the public if a patent application is to be filed, until the party having the right to file has had a reasonable time to file.

6.3 Publication. The Laboratory and the Company agree to confer and consult prior to the publication of Subject Data to ensure that no Proprietary Information is released and that patent rights are not jeopardized. Prior to submitting a manuscript for outside review which contains the results of the research under this Agreement, or prior to publication if no such review is made, each party shall be offered at least 45 days to review such proposed publication and to file patent applications in a timely manner, if it is so entitled or required under this agreement.

Article 7. Representations and Warranties

** This language should not be changed except by L. Fradkin or OGC.

7.1 Representation and Warranties of the Laboratory. The Laboratory hereby represents and warrants to the Company as follows:

7.1.1 Organization. The Laboratory is a Federal laboratory of the EPA and is wholly owned by the Government. The Laboratory's substantial purpose is the performance of research or development.

** Alternative language for a Program, Media or Regional Office, designated for FTTA purposes as a Laboratory, would be: "One of the purpose's of the Office is"]

7.1.2 Mission. The performance of the activities specified by this Agreement are consistent with the mission of the Laboratory.

7.1.3 Authority. All prior reviews and approvals required by Federal regulations and laws have been obtained by the Laboratory prior to the execution of this Agreement. The Laboratory official executing this Agreement has the requisite authority to do so.

7.2 Representations and Warranties of the Company. The Company hereby represents and warrants to the Laboratory as follows:

7.2.1 Corporate Organization. The Company, as of the date hereof, is a corporation duly organized, validly existing and in good standing under the laws of the State of [state of incorporation].

** If the Company is a subsidiary, affiliate, joint venture, or the like, add this or a similar clause after naming the state: "..., and is a wholly owed subsidiary (affiliate, etc.) of __, a [name the appropriate state] corporation."

7.2.2 Power and Authority. The Company has the requisite power and authority to enter into this Agreement and to perform according to the terms thereof.

7.2.3 Due Authorization. The Board of Directors and stockholders

of the Company have taken all actions, if any, required to be taken by law, the Company's Certificate or Articles of Incorporation, its bylaws or otherwise, to authorize the execution and delivery of this Agreement.

7.2.4 No Violation. The execution and delivery of this Agreement do not contravene any material provision of, or constitute a material default under, any material agreement binding on the Company or any valid order of any court, or any regulatory agency or other body having authority to which the Company is subject, nor, to the best of its knowledge, is the Company the subject of any adversarial proceeding by any regulatory governmental agency.

Article 8. Termination

8.1 Termination by Mutual Consent. The Laboratory and the Company may elect to terminate this Agreement, or portions thereof, at any time by mutual consent. In such event the parties shall specify the disposition of all property, patents, unexpended or unobligated funds, and the results arising from the work completed or in progress under this Agreement. Upon termination by mutual consent, the Laboratory, as of the termination date, shall make no new commitments, and as soon after the termination date as feasible, shall cancel all outstanding commitments that relate to those portions of this Agreement that have been mutually terminated.

8.2 Termination by Unilateral Action. Either party may unilaterally terminate for cause this entire Agreement at any time by giving the other party written notice, not less than _____ days prior to the desired termination date [The time period is negotiable, but typically has been about 90 days]. The Laboratory shall make no new commitments after receipt of a written termination notice from the Company and shall to the extent possible, by the termination date, cancel all outstanding commitments and contracts that were entered into as a consequence of the requirements of the SOW in Attachment A. However, the Laboratory may, at its own expense, continue said commitments beyond said termination date without liability on the part of the Company.

8.3 Termination Costs. Each party shall pay its own termination costs out of its own funds. If the Company so requests in writing, any funds furnished by the Company which are unexpended or unobligated as of the date of termination will be returned to the Company. In no event shall either party be liable for the direct termination costs of the other party or said other party's expenses caused by or related to the termination.

8.4 Survival. To the extent rights and obligations hereunder have accrued as of the date of expiration or termination, the following Articles of this Agreement shall survive any expiration or termination hereof: 5, 6, and 10, and any expiration or termination hereof shall not affect any license granted hereunder.

Article 9. Disputes

** This language should not be changed except by L. Fradkin or OGC.

9.1 Settlement. Any dispute arising under this Agreement which cannot be readily resolved shall be submitted jointly to the signatories of this Agreement. A joint decision of the signatories or their designees shall be the disposition of such dispute. If the signatories are unable to jointly resolve a dispute within a reasonable period of time after submission of the dispute for resolution, the matter shall be submitted to the Administrator of EPA or the Administrator's designee for resolution.

9.2 Continuation of Work. Pending the resolution of any dispute or claim pursuant to this Article, the parties agree that performance of all obligations shall be pursued diligently in accordance with the direction of the Laboratory signatory.

Article 10. Liability

10.1 Employees. EPA's responsibility for the payment of claims to the Company or its employees for loss of property, personal injury or death caused by the negligence or the wrongful act or omission of employees of EPA while acting within the scope of their employment, is in accordance with the provisions of the Federal Tort Claims Act, 28 U.S.C. [[section]][[section]] 2671-80 and 40 C.F.R. Part 10.

10.2 No Warranty. Except as specifically stated in Article 7, neither party makes any express or implied warranty as to any matter whatsoever, including the conditions of the research or as to any Invention made or product developed, or the ownership, merchantability, or fitness for a particular purpose, of the research or any such Invention or product.

10.3 Indemnification. The Company holds the Government harmless and indemnifies the Government for all liabilities, demands, damages, expenses and losses arising out of the use by the Company, or any party acting on the Company's behalf or under its authorization, of the Laboratory's research and technical developments, the Laboratory's facilities or equipment, or out of any use, sale or other disposition by the Company, or others acting on its behalf or with its authorization, of products made by the use of the Laboratory's technical developments. This provision shall survive the termination of this Agreement.

10.4 Force Majeure. Neither party shall be liable for any event or circumstance beyond its reasonable control not caused by the fault or negligence of such party, which causes such party to be unable to perform its obligations under this Agreement (and which it has been unable to overcome by the exercise of due diligence), including, but not limited to flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strikes, labor dispute, sabotage of the Laboratory facilities, or any order or injunction made by a court or public agency. In the event of the occurrence of such a force majeure

event, the party unable to perform shall promptly notify the other party. It shall further use its best efforts to resume performance as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the force majeure event.

10.5 Third Party Liability. The Company agrees that during the term of this Agreement it will carry liability insurance in the amount of \$ _ to cover any liability to Government employees and private individuals that may arise as a result of the negligent or wrongful acts of any of the Company's employees while they are performing work under this Agreement including any work which such an employee may be performing at the Laboratory.

** The actual amount is negotiable. No recent CRDA has been under \$1,000,000.

Article 11. Miscellaneous

** This language should not be changed except by L. Fradkin or OGC.

11.1 No Benefits. No member of, or delegate to the United States Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, nor to any benefit that may arise therefrom. This provision shall not be construed to extend to this Agreement if the Agreement is made with the Company for the Company's general benefit.

11.2 Governing Law. The construction, validity, performance and effect of this Agreement for all purposes shall be governed by the laws applicable to the Government.

11.3 Entire Agreement. This agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any prior understanding or written or oral agreement relative to said matter.

11.4 Headings. Titles and headings of the Sections and Subsections of this Agreement are for the convenience of references only and do not form a part of this Agreement and shall in no way affect the interpretation thereof.

11.5 Waivers. None of the provisions of this Agreement shall be considered waived by any party hereto unless such waiver is given in writing to all other parties. The failure of any party to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any party hereto.

11.6 Severability. The illegality or invalidity of any provisions of this Agreement shall not impair, affect or invalidate the other provisions of this Agreement.

11.7 Amendments. If either party desires a modification to this Agreement, the parties shall, upon reasonable notice of the proposed modification by the party desiring the change, confer in good faith to determine the desirability of such modification. Such modification shall not be effective until a written amendment is signed by all the parties hereto by their

representatives duly authorized to execute such amendments.

11.8 Assignment. Except as otherwise permitted herein, neither this Agreement nor any rights or obligations of any party hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other party; the Company may assign this Agreement to the successors or assignees of a substantial portion of the Company's business interests to which this Agreement directly pertains.

11.9 Notices. All notices pertaining to or required by this Agreement shall be in writing and shall be signed by an authorized representative and shall be delivered by hand or sent by certified mail, return receipt requested, with postage prepaid, addressed as follows:

If to the Company:

If to the Laboratory:

Any party may change such address by notice given to the other party in the manner set forth above.

11.10 Independent Parties. The relationship of the Laboratory and the Company is that of independent parties and not as agents of each other or as joint venturers or partners. The Laboratory shall maintain sole and exclusive control over its personnel and operations. The Company shall maintain sole and exclusive control over its personnel and operations.

11.11 Use of Name or Endorsements. The Company shall not use the name of the Laboratory or EPA, on any product or service which is directly or indirectly related to either this Agreement or any patent license or assignment agreement which implements this Agreement, without the prior approval of the Laboratory. By entering into this Agreement the Laboratory does not directly or indirectly endorse any product or service provided, or to be provided, by the Company, its successors, assignees, or licensees. The Company shall not in any way imply that this Agreement is an endorsement of any such product or service. This section in no way prohibits the publication of any EPA indication or statement regarding the efficacy of any Subject Invention and/or any other results of this Agreement.

Article 12. Effective Date

12.1 Effective Date. This agreement shall enter into force as of the date of the last signature of the parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as follows:

U.S. ENVIRONMENTAL PROTECTION AGENCY

By _____ Date _____
(Type name as well)

Title _____

THE COMPANY

By _____ Date _____
(Type name as well)

Title _____

STATEMENT OF WORK

For

COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

Between

The United States Environmental Protection Agency

[Name of EPA Laboratory or Office]

And

[Name of the Company]

The SOW should include:

Title of Project

Goal

Approach

This includes, specifically, what EPA will do and what the cooperator will do.

Resources

This includes EPA's and the Cooperator's contributions, both non-monetary and monetary.

Deliverables

This includes the number of days or months for each task from date of final approval of the Agreement.